

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

BEVERLY MICHELLE MOORE

Petitioner,

v.

WARDEN MILLICENT NEWTON-
EMBRY,

Respondent.

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Case No. CIV-09-985-C

MOTION FOR EXTENSION OF TIME

Petitioner, by and through her counsel, respectfully requests that the Court extend her deadline to respond to Respondent's Motion for Summary Judgment. In support of her motion, Petitioner states the following:

1. On February 23, 2010, Respondent filed a motion to dismiss Petitioner's Amended Petition for Writ of Habeas Corpus, arguing that Petitioner's claim is barred by the one-year filing requirement under the Antiterrorism and Effective Death Penalty Act of 1996.
2. Petitioner's position is that the one-year time bar is excused on the theory of actual innocence.
3. In May 2010, the Court converted Respondent's motion to one for summary judgment, requiring Petitioner to point to evidence supporting her claim of actual innocence. See Am. Courtroom Minute Sheet dated May 6, 2010, Dkt. No. 47.
4. In mid-July 2010, the Court appointed the undersigned and, despite several prior extensions of the date in which to respond to Respondent's motion, *sua sponte* extended the deadline to October 6, 2010.

5. Since counsel was appointed by Petitioner, the Court has graciously extended the deadline to respond twice, first to November 30, and secondly to December 15. See Oct. 20, 2010, Order, Dkt. No. 64 & Nov. 12, 2010, Order, Dkt. No. 66. In addition to accommodating the trial schedule of Petitioner's counsel, the prior extensions were necessary to enable Petitioner to investigate and, where permitted, obtain discovery believed to be necessary to support Petitioner's actual innocence claim. Without the requested extension, the current deadline for Petitioner's response is December 15, 2010.
6. In reviewing the discovery obtained both formally and informally, Petitioner's counsel believed additional discovery was necessary and filed a Motion for Discovery on November 10, 2010. A later-filed motion for discovery was also filed on November 19, 2010. Counsel for Respondent has objected to both of those motions.
7. The Court has scheduled oral argument on the pending motions for discovery on December 14, 2010.
8. If the Court were to grant Petitioner's motions after oral argument, Petitioner would need an extension to permit her to issue subpoenas, allow for a "reasonable" time for the third parties to respond (typically considered 14 days), review and provide the relevant discovery to Petitioner's medical expert for review, and only then would she be able to fully and adequately prepare a response. An extension until January 31 would be necessary to accomplish the above tasks, especially in light of the difficulties in obtaining timely responses during the last two weeks of December.
9. Were the Court to deny Petitioner's motions after oral argument, she would not have sufficient time to prepare a response to the motion for summary judgment, which would be due the following business day. Counsel for Petitioner will be out of state from

December 19 through the 27th and would need an extension until at least January 7 to prepare the response in this event.

10. Counsel is mindful of the special nature of habeas proceeding and the need for an expeditious resolution, but certifies that she has made diligent efforts towards preparing a response to the pending dispositive motion. Those efforts are hampered by the lack of a trial file and the need to obtain discovery in the possession, custody, or control of third parties that enable Petitioner to “set out specific facts showing a genuine issue” as to her actual innocence. See Fed. R. Civ. P. 56.
11. Although Respondent’s counsel objects to Petitioner’s request for discovery, they do not object to the requested extension.
12. No hearing or trial has been scheduled in this matter and the requested extension will not impact any other court deadlines.

Relief Requested

Petitioner submits that she has established good cause as required by Fed. R. Civ. P. 6(b) for her request to extend her deadline to respond to Respondent’s Motion for Summary Judgment. Accordingly, she respectfully requests that the Court grant her request and extend the deadline to January 31, 2010.

Respectfully Submitted,

s/Christine Cave

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ATTORNEY FOR BEVERLY MICHELLE MOORE

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 2010, I electronically transmitted the attached document to the Court Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Jared Looper
Diane Slayton
COUNSEL FOR DEFENDANT

s/Christine Cave
Christine Cave